



National Headquarters

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July 19, 2017

Submitted electronically to fw2foia@fws.gov

David Mendias, FOIA Coordinator
U.S. Fish and Wildlife Service
USFWS-Ecological Services
500 Gold Ave SW
Albuquerque, NM 87102
Email: fw2foia@fws.gov

**Re: Freedom of Information Request for Records Relating to New
Border Wall or Border Levee Activities on the Santa Ana NWR**

Dear Mr. Mendias:

On behalf of Defenders of Wildlife (Defenders), I respectfully submit the following request pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the Department of Interior (DOI) implementing regulations, 43 C.F.R. §§ 2.1-2.34, seeking records generated, obtained or received by the U.S. Fish and Wildlife Service (Service or FWS) related to new border wall or border levee activities on the Santa Ana National Wildlife Refuge (NWR), as described in detail below.

INTRODUCTION

On January 25, 2017, the President issued Executive Order 13,767 – Border Security and Immigration Enforcement Improvements. 82 Fed. Reg. 8,793 (2017). The policies presented in the Executive Order included “secur[ing] the southern border of the United States through the immediate construction of a physical wall on the southern border...” Exec. Order 13,767 § 2(a). In addition, the Order directed the Secretary of Homeland Security to, amongst other things, “take all appropriate steps to immediately plan, design, and construct a physical wall along the southern border... [and i]dentify and, to the extent permitted by law, allocate all sources of Federal funds for the planning, designing, and constructing of a physical wall along the southern border.” *Id.* at § 4(a), (b). The Executive Order, moreover,

permit[s] all officers and employees of the United States, as well as all State and local officers as authorized by the Secretary, to have access to all Federal lands as necessary and appropriate to implement this order; and ... enable[s] those officers and employees of the United States ... to perform such actions on Federal lands as the Secretary deems necessary and appropriate to implement this order.

Id. at § 12(a), (b).

In May 2017, the Customs and Border Patrol (CBP) released its FY 2018 Budget Request contains \$1.57 billion for Border Wall Construction, including “construction of 32 miles of new border wall system in the Rio Grande Valley Sector [and] 28 miles of new levee wall in the Rio Grande Valley Sector.” DHS, CBP, *FY 2018 Congressional Justification: Procurement, Construction, and Improvements* 48 (2017).

It has been recently reported that almost 3 miles of this levee wall will be constructed through the Santa Ana National Wildlife Refuge. *See, e.g.,* Melissa del Bosque, *Trump Administration Preparing Texas Wildlife Refuge for First Border Wall Segment*, TEXAS OBSERVER (published Jul 14, 2017 5:46 PM) <https://www.texasobserver.org/trump-border-wall-texas-wildlife-refuge-breaking/>. Moreover, CBP officials and private contractors have been reportedly meeting to discuss this project for “at least six months,” and pre-construction activities, such as the extraction of soil samples from the existing levee, are already taking place. *Id.*



“Workers take soil samples on the levee at the Santa Ana National Wildlife Refuge.” *Id.*

RECORDS REQUESTED

To facilitate your review of this request, the following addresses the basic elements of a FOIA request. *See* 43 C.F.R. § 2.5; *FWS FOIA Frequently Asked Questions*, (updated Aug. 30, 2016) <https://www.fws.gov/irm/bpim/foia.html> (question 2).

CONTACT INFORMATION

Brett Paben
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Email: bpaben@defenders.org

Please use this information to contact me in case you need additional information or find this request unclear or responsive records voluminous. To expedite matters, telephone or email communications are preferred. If desired, I would appreciate the opportunity to work with you to limit our request to expedite your response.

This contact information should be used for delivering the responsive records as well.

REASONABLE DESCRIPTION OF THE RECORDS SOUGHT

Based on the information presented above, Defenders respectfully requests copies of the following records from the Service:

1. All records related to activities conducted on the Santa Ana National Wildlife Refuge (NWR) by Department of Homeland Security (DHS) and/or Customs Border Patrol (CBP);
2. All records related to any special use permit (SUP) or right-of-way issued to DHS and/or CBP for activities on the Santa Ana NWR;
3. All records related to any compatibility determination, or other finding concerning compatibility, regarding DHS and/or CBP activities on the Santa Ana NWR, including but not limited to those made pursuant to the National Wildlife Refuge System Administration Act, 16 U.S.C. § 668dd-668ee, and its implementing regulations, 25 C.F.R. pts. 25-35;

4. All records related to any information or activities, including but not limited to analysis, documentation, decisions, and discussions, conducted pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.* for DHS and/or CBP activities on the Santa Ana NWR;
5. All records related to any information or activities conducted pursuant to Section 7 of the Endangered Species Act (ESA), 16 U.S.C. § 1531 *et seq.*, for DHS and/or CBP activities on the Santa Ana NWR;
6. All records related to any communications between the Service and DHS and/or CPB concerning the Santa Ana NWR; and,
7. All records related to any communications between the Service and the U.S. Army Corps of Engineers (Corps) regarding the activities of DHS and/or CBP activities on the Santa Ana NWR.

This request is not intended to exclude any other records that, although not specifically requested, are reasonably related to the subject matter of this request.

Under DOI regulations, “record” is defined to mean “an agency record that is either created or obtained by an agency and is under agency possession and control at the time of the FOIA request, or is maintained by an entity under Government contract for the purposes of records management.” 43 C.F.R. § 2.70. For purposes of this request, these “records” may include, but are not limited to, the following: documents of any type, including both electronic and paper documents, electronic mail, writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), correspondence, letters, memoranda, reports, consultations, papers, studies, notes, field notes, recordings, telephone conversation recordings, voice mails, telephone logs, messages, instant messages, G-chats, text messages, chats, telefaxes, data, databases, drawings, surveys, graphs, charts, photographs, videos, meeting notes or minutes, electronic and magnetic recordings of meetings, maps, Geographic Information System data, GPS, UTM, LiDAR, CDs, and any other compilations of data from which information can be obtained.

HELPFUL IDENTIFYING INFORMATION

Offices that likely created the records sought

Records requested under items 1-4 above were likely created at the Santa Ana NWR, 3325 Green Jay Road, Alamo, Texas 78516.

Records requested under item 5 above were likely created at the Texas Coastal Ecological Services Field Office, 7629 El Camino Real, Suite 211, Houston, Texas 77058, and/or the Alamo Sub-Office, Santa Ana NWR, 3325 Green Jay Road, Alamo, TX 78516.

Many of the records requested under items 6 and 7 were likely created at the Santa Ana NWR and the Texas Coastal Ecological Services Field Office and/or Alamo Sub-Office. In addition, however, records may have been created at the Service's Southwest Regional Office, 500 Gold Avenue SW, Albuquerque, New Mexico 87102 and the Service's Headquarters, 1849 C Street NW, Washington, DC 20240.

This request is being sent to the Service's Southwest Regional office with the understanding that it will be forwarded to any other agency offices where responsive records may be located.

If it facilitates the Service's response, Defenders will also receive records on a rolling basis. If appropriate, we are also willing to separate the items of this request, *e.g.*, (a) items 1-4, (b) item 5, and (c) items 6-7 – if it will expedite processing or move the request(s) to a faster processing track. *See* 43 C.F.R. § 2.15(e).

Timeframe for the records sought

Defenders is seeking records from January 1, 2006, to the present.

FORMAT IN WHICH DEFENDERS WISHES TO RECEIVE RECORDS

Defenders prefers receiving electronic copies of all responsive documents. The FOIA Improvement Act of 2016 requires CBP to provide records in such electronic format, including, if possible, and as requested here. 5 U.S.C. § 552(a)(3)(B) (“an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.”). Defenders requests that records be provided in .pdf file format, without any “portfolios” or “embedded files,” which are not readily accessible. In addition, we ask that any electronic files provided are in a text-searchable and/or OCR format. *Please do not provide the records in a single, or “batched,” .pdf file.* Defenders also prefers you include an index of responsive records.

RECORD DELIVERY

We appreciate your assistance in expeditiously responding to this request. As mandated under FOIA, we anticipate a response within 20 working days. 5 U.S.C. §

552(a)(6)(A)(i); 6 C.F.R. § 5.6(c). We respectfully urge you to post responses to this and parallel FOIA requests online in accordance with 5 U.S.C. § 552(a)(2)(D)(ii)(II).

If you determine that this FOIA request will require longer than ten business days to process, please notify me of the request's individualized tracking number, the processing track it has been assigned, and how to obtain status updates via telephone, email or on the Internet. *See* 5 U.S.C. § 552(a)(7); 43 C.F.R. §§ 2.21(b), 2.15(e).

Additionally, if you anticipate needing more than the 20 working days allotted under FOIA to fully process this request, please notify me of the expected delay. 5 U.S.C. §§ 552(a)(6)(A)(i), 552(a)(6)(B)(i).

WITHHELD DOCUMENTS

Under the FOIA Improvement Act of 2016, agencies are prohibited from denying requests for information pursuant to FOIA unless prohibited by law or the agency reasonably believes release of the information will harm an interest that is protected by a FOIA exemption. 5 U.S.C. § 552(a)(8)(A). Should you decide to invoke a FOIA exemption, please include in your response a description of which responsive documents are withheld with sufficient information for us to assess the basis for the exemption, including any interest(s) that would be harmed by their release. Please include a *Vaughn Index* or otherwise identify:

1. Basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and
2. Complete explanation and justification for withholding each record, including the specific exemption(s) under which the record (or portion thereof) is withheld and a full explanation of how each exemption applies to the withheld material. Such statements will be helpful in deciding whether to appeal an adverse determination and/or may help to avoid unnecessary litigation.

5 U.S.C. § 552(b). If you determine that portions of responsive records are exempt from disclosure, please segregate or redact the exempt portions and provide the non-exempt portions within the statutory time limit. 5 U.S.C. § 552(a)(8)(ii).

STATEMENT OF WILLINGNESS TO PAY APPLICABLE FEES

If the following request for a fee waiver is not granted, Defenders is willing to pay up to \$50.00 for search time and duplication costs exceeding two hours and 100 pages, or equivalent volume. *See* 43 C.F.R. §§ 2.39, 2.49(a). Before accruing any costs to be

charged to Defenders, however, I respectfully request that you contact me to discuss the costs before fulfilling this FOIA request. 43 C.F.R. § 2.49(b).

REQUEST FOR A FEE WAIVER

Category of requester for fee purposes anticipated: All other requesters

Pursuant to FOIA, 5 U.S.C. § 552(a)(4)(A)(iii), and Department of the Interior (DOI) regulations, 43 C.F.R. pt. 2, Subpt. G, Defenders requests a waiver of all charges (*i.e.*, search, review, and duplication fees) incurred in connection with this request.

FOIA was designed to provide citizens a broad right to access government records. FOIA's basic purpose is to "open agency action to the light of public scrutiny," with a focus on the public's "right to be informed about what their government is up to." *U.S. Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773-74 (1989) (internal quotation and citations omitted). To provide public access to this information, FOIA's fee waiver provision requires that "[d]ocuments shall be furnished without any charge or at a [reduced] charge" if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). FOIA's fee waiver requirement is "liberally construed in favor of waivers for noncommercial requesters." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987); *accord Forest Guardians v. U.S. Dep't of the Interior*, 416 F.3d 1173, 1177-78 (10th Cir. 2005); *Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003); *Community Legal Servs. v. U.S. Dep't of Hous. and Urban Dev.*, 405 F. Supp. 2d 553, 555 (E.D. Pa. 2005).

Congress specifically designed FOIA's 1986 fee waiver amendments to provide non-profit organizations such as Defenders access to government records without payment of fees. Indeed, the fee waiver provision was intended to "explicitly recognize[] the importance and the difficulty of access to governmental documents for such typically under-funded organizations and individuals," including nonprofit public interest groups. *Better Gov't Ass'n v. Dep't of State*, 780 F.2d 86, 94 (D.C. Cir. 1986). FOIA "should not be interpreted to allow federal agencies to set up roadblocks to prevent noncommercial entities from receiving a fee waiver." *W. Watersheds Project v. Brown*, 318 F. Supp. 2d 1036, 1039 (D. Idaho 2004).

Please note that the U.S. Fish and Wildlife Service, U.S. Forest Service, Bureau of Land Management and National Park Service have previously granted requests for fee waivers in their provision of documents to Defenders.

DEFENDERS SATISFIES THE REQUIREMENTS FOR A FEE WAIVER

Under the two-part statutory test, a requester is entitled to a fee waiver if “disclosure of the information” is (1) “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government,” and (2) “is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45(a).

A. DISCLOSURE OF THE REQUESTED RECORDS IS IN THE PUBLIC INTEREST BECAUSE IT IS LIKELY TO CONTRIBUTE SIGNIFICANTLY TO PUBLIC UNDERSTANDING OF GOVERNMENT OPERATIONS OR ACTIVITIES

DOI’s regulations set forth four factors to consider in determining whether a request meets this first part of the FOIA fee waiver requirement – whether the records sought here are in the public interest because it is likely to contribute significantly to public understanding of government operations or activities, the Service considers the following factors to determine whether a request is in the public interest. These are (1) “[h]ow the requested records concern the operations or activities of the Federal government,” (2) “[h]ow disclosure is likely to contribute to public understanding of those operations or activities,” (3) “[h]ow disclosure is likely to significantly contribute to the understanding of a reasonably broad audience of persons interested in the subject,” and (4) [h]ow the public’s understanding of the subject in question will be enhanced to a significant extent by the disclosure.” 43 C.F. R. § 2.48(a).

As presented below, Defenders satisfies each of these criteria and therefore qualifies for a fee waiver.

1. The Requested Records Concern Operations or Activities of the Federal Government

In accordance with 43 C.F. R. § 2.48(a)(1), the requested records concern the operations and activities of the federal government, namely an executive branch agency, the U.S. Fish and Wildlife Service. Responsive materials were also generated in response to activities by other executive branch agencies – DHS and CBP. The requested records describe the agency’s views and actions related to rules, policies, plans and other federal activities concerning border security on federal public lands and waters. *See Judicial Watch*, 326 F.3d at 1313 (“[R]easonable specificity is all that FOIA requires with regard to this factor”) (internal quotations omitted).

2. Disclosure of the Requested Records is Likely to Contribute to Public Understanding of Government Operations or Activities

In accordance with 43 C.F. R. § 2.48(a)(2), the requested records are meaningfully informative about government operations or activities, there is a logical connection between their contents and those operations or activities, and disclosure will contribute to an increased public understanding of the subject matter because Defenders has the expertise to analyze and publicize the information in a manner that is useful to a broad audience of persons interested in border security development on federal public lands and waters.

Disclosure would also contribute to public understanding because the information requested is new and not already in the public domain, in neither the same nor a substantially identical form. The subject of the request, furthermore, is one of significant interest and controversy. Members of Congress, for example, have stated that the FY 2018 cannot pass unless it contains money for a border wall with Mexico, which could result in another government shutdown. *See, e.g., Mark Barrett, Meadows Comments on Mexico Wall Money Spark Shutdown Talk*, ASHEVILLE CITIZEN-TIMES, (updated July 13, 2017 9:28 AM) <http://www.citizen-times.com/story/news/2017/07/12/meadows-comments-mexico-wall-money-spark-shutdown-talk/472224001/>. The growing number of news stories from around the country also demonstrate significant public interest in CBP's current and future activities in the Santa Ana NWR. *See, e.g., Melissa del Bosque, Trump Administration Preparing Texas Wildlife Refuge for First Border Wall Segment*, TEX. OBSERVER (published Jul 14, 2017 5:46 PM) <https://www.texasobserver.org/trump-border-wall-texas-wildlife-refuge-breaking/>; Josh Siegal, *Trump Administration Prepares to Build First Part of Border Wall on Texas Wildlife Refuge: Report*, WASH. EXAMINER (July 14, 2017, 9:05 PM) <http://www.washingtonexaminer.com/trump-administration-prepares-to-build-first-part-of-border-wall-on-texas-wildlife-refuge-report/article/2628751>; Jenny Jarvie and Brian Bennett, *This 'Crown Jewel' of Refuges is One of the World's Top Bird Destinations*, L.A. Times, (July 17, 2017 7:45 PM) <http://www.latimes.com/nation/la-na-texas-border-wall-20170717-story.html>; Oscar Margain, *'Jewel' of Wildlife Refuge System in Path of Trump's Border Wall*, KENS-TV, (July 18, 2017 11:05 AM). At least one article also provides an account of the “enraged” residents who showed up enraged to the Santa Ana Wildlife Refuge on July 16, 2017, “to protest the building of the border wall that will cut through property and, for the most part, destroy the refuge.” Mark Moreno, THE MONITOR, *Report: Border Wall to be Built First through Santa Ana Refuge*, (July 17,

2017), http://www.themonitor.com/news/article_1894e8f4-6a8b-11e7-aa63-e3cab0511f0f.html.

The information about government operations and activities contained in the requested records will meaningfully inform public understanding the potential impacts of CBP's developing a border wall or levee on the Santa Ana NWR. It will also aid public understanding of FWS position regarding CBP actions affecting other public conservation lands. This information is highly relevant to Defenders and our members because we are deeply concerned about these issues. Our review and analysis of responsive records will provide the public with critical information about current and future federal policy and activities on not only the Santa Ana NWR but federal public lands systems nationwide in general as well.

Once the information is made available, we will share it with our 1.2 million members, supporters, activists, partners and the general public in a manner that will contribute to their understanding of government activities. Defenders has a well-established record of active participation in oversight of governmental activities and decision-making, and consistent contribution to the public's understanding of those activities.

Defenders is a national non-profit organization focused on wildlife and habitat conservation and the safeguarding of biodiversity. We inform, educate and counsel the public regarding environmental issues, policies and laws relating to wildlife protection and public lands. We represent our members' interests in ensuring that imperiled species and their habitat receive the full protections due under federal law. We frequently communicate with our members, supporters, partner organizations, and the interested public on news and information relevant to border security development on federal public lands and waters, its impacts on species, and the adequacy of measures to mitigate for those impacts.

Defenders will rely on its own legal and scientific experts, as well as outside experts, to analyze the information contained in records produced in response to this FOIA request. We have used, and will continue to use, a full array of tools to ensure our members' interests are vindicated and the general public is informed through our synthesis of the information gleaned from the requested records.

Defenders will ensure that the information produced in response to this request, and our analysis thereof, is disseminated to a reasonably broad audience of persons interested in federal lands management and wildlife conservation. In disseminating the information, Defenders will assure that it is made available for the benefit of the

interested persons beyond our membership, such as members of other conservation advocacy organizations, the media, the academic community, and the general public.

Defenders has the ability to disseminate information obtained from the requested records in a number of ways to a broad audience. We actively communicate with our members, supporters and the general public through direct mail and email campaigns. We broadcast action alerts notifying the public of opportunities to comment on agency proposals; publish information on and frequently update our website (797,055+ visitors per month) and blog (21,000+ monthly readership) to educate the public on wildlife conservation issues; distribute a quarterly print magazine with a circulation of approximately 350,000; communicate with partner organizations both nationally and internationally; maintain an active online presence through Facebook (652,000+ followers), Twitter (109,000+ followers), and YouTube (6900+ subscribers); distribute press releases directly to media contacts and through our website and RSS feed; and educate lawmakers and advocates on conservation law at the federal, state and local level.

3. Disclosure of the Requested Records is Likely to Significantly Contribute to the Understanding of a Reasonably Broad Audience of Persons Interested in the Subject

In accordance with 43 C.F. R. § 2.48(a)(3), the requested information is new, not already publicly available, and its disclosure will increase the level of public understanding that existed prior to disclosure. Through Defenders analysis and dissemination, disclosure of the information contained in the requested records will contribute to the understanding of a broad audience of persons that are interested in development activities on federal public lands and waters, as stated above.

The requested records will enable Defenders to provide information to the public at large regarding the current agency views and activities related to rules, policies, plans and other Service and CBP actions concerning management of border security development on the Santa Ana NWR and other federal public lands. This information is essential to inform the public about potential changes to the Santa Ana NWR, including impacts to wildlife, habitat, and public access. Indeed, the public does not currently have an ability to easily evaluate the requested records, which are new and not currently in the public domain. *See Cmty. Legal Servs. V. HUD*, 405 F. Supp. 2d 553, 560 (D. Pa. 2005) (if requested records “clarify important facts” about policy, request “would likely shed light on information that is new to the interested public.”).

Disclosure would also contribute to general public's understanding because the information requested is new and not already in the public domain, in neither the same nor a substantially identical form. The subject of the request, furthermore, is one of significant interest and controversy. Members of Congress, for example, have stated that the FY 2018 cannot pass unless it contains money for a border wall with Mexico, which could result in another government shutdown. The number of news stories from around the country demonstrate a significant interest among the general public interest in CBP's current and future activities in the Santa Ana National Wildlife Refuge (NWR). *See, e.g., Part A.2, supra.*

Disclosing the requested records to Defenders is not only "likely to contribute," but is certain to contribute, to public understanding of border security construction on the Santa Ana NWR and other federal public lands and waters and its potential impacts to imperiled species and their habitat. Disclosure of the requested records will significantly enhance the public's understanding of CBP's current and future border construction activities on the Santa Ana NWR and other federal public lands as compared to the level of understanding that exists prior to disclosure. At present, the public has no information about an otherwise closed-door process where neither the Service nor CBP has conducted any public review or allowed for any public input on the meetings and activities concerning activities on the Santa Ana NWR.

Defenders' dissemination of this information will therefore provide new insight to a broad audience of interested persons as to how border security is being applied on Santa Ana NWR, and the consequences for wildlife, habitat, and other public lands. *See* 43 C.F. R. § 2.48(a)(3).

4. The Public's Understanding of the Subject in Question will be Significantly Enhanced by the Disclosure of Requested Records.

In accordance with 43 C.F.R. § 2.48(a)(4), the public's understanding of the subject of this request will be enhanced to a *significant extent* by disclosure of the records. FOIA's legislative history makes clear that the 'significance' test is met where, as here, the information requested will support "public oversight of agency operations":

A requester is likely to contribute significantly to the public understanding if the information disclosed is new; supports public oversight of agency operations; or otherwise confirms or clarifies data on past or present operations of the government.

132 Cong. Rec. H9464 (Reps. English and Kindness); *see also McClellan Ecological Seepage Situation*, 835 F.2d at 1284–86.

Disclosure of the requested records will significantly enhance the public's understanding of CBP's current and future border construction activities on the Santa Ana NWR and other federal public lands as compared to the level of understanding that exists prior to disclosure. Disclosure will provide the public with information about an otherwise closed-door process. In regards to the subject of this request, for example, a federal government official said "This should be public information... There shouldn't be government officials meeting in secret just so they don't have to deal with the backlash. The public has the right to know about these plans." Melissa del Bosque, *supra* p. 1, 9. The requested records are new information that have not previously been disclosed, and disclosing them will support public oversight of agency operations regarding federal activities and their impacts on public lands, wildlife and habitat. *See also* Parts A.2, A.3, *supra*.

The information about government operations and activities contained in the requested records will meaningfully inform public understanding of the policies of the Service and CBP towards developing a border wall or levee on the Santa Ana NWR. It will also aid public understanding the Service's actions that affect CVP's development on other public conservation lands. This information is highly relevant to Defenders and our members because we are deeply concerned about these issues. Our review and analysis of responsive records will provide the public with critical information about current and future federal policy and activities on not only the Santa Ana NWR but federal public lands systems nationwide in general as well.

B. DISCLOSURE OF THE REQUESTED RECORDS IS NOT PRIMARILY IN DEFENDER'S COMMERCIAL INTEREST

The Service "will consider any commercial interest of [Defenders] that would be furthered by the requested disclosure," 43 C.F. R. § 2.48(b), for the second part of FOIA's fee waiver test.

Founded in 1947, Defenders of Wildlife is a 501(c)(3) nonprofit organization with 1.2 million members and supporters dedicated to the protection of all native animals and plants in their natural communities. Access to government records through FOIA requests is essential to Defenders' role of educating the general public about government activities related to wildlife conservation. We have no commercial interest in and will realize no commercial benefit from the release of the requested records.

Defenders also does not seek the requested information to further any commercial, trade, or profit interest of the organization.

Since Defenders has no commercial interests and operates exclusively for the exempt purposes specified in section 501(c)(3), the public interest in the disclosure of the requested records is the entire interest in disclosure.

CONCLUSION

For the foregoing reasons, Defenders of Wildlife satisfies the statutory and regulatory requirements to be considered in granting fee waivers under FOIA and DOI's regulations. 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F. R. pt. 2, Subpt. G. We therefore hope that you will immediately grant this request and tender responsive records.

As stated above, if a fee waiver is denied, Defenders is willing to pay up to \$50.00 in reasonable search time and/or duplication costs exceeding two hours and 100 pages, or equivalent volume. Please contact me to discuss any costs prior to fulfilling this FOIA request.

Thank you for your assistance.

Sincerely,

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